

No. 9/3/87-6Lab./1766.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Sharco Industries Pvt. Ltd., 12/6 Mahtura Road, Faridabad.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 632 of 1985

*between*

SHRI JHAGRULAL YADAV, WORKMAN AND THE RESPONDENT-MANAGEMENT  
OF M/S SHARCO INDUSTRIES PVT. LTD., 12/6, MATHURA ROAD,  
FARIDABAD

*Present :*

None for the parties.

#### AWARD

This reference under Section 10 (1) (c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 59 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of labour,— vide its endorsement No. ID/FD 40788-93, dated 1st October, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Jhagru Lal, workman and the respondent management of M/S. Sharao Industries, Pvt. Ltd., 12/6, Mathura Road, Faridabad. Accordingly, it has been registered as reference No. 632 of 1985.

2. No body has turned up on behalf of either party. Workman is also not present. It is 12.15 P.M. It means that workman is not interested to pursue this reference. Hence the reference is dismissed in default.

Dated, the 25th February, 1987.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.

Endorsement No. 514, dated the 5th March, 1987.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of I. D. Act.

A. S. CHALIA,  
Presiding Officer,  
Labour Court, Faridabad.

The 4th May, 1987

No. 9/2/87-6Lab./2312.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Mohan Spinning Mills, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 28 of 87.

*Between*

SHRI RAM BAHADUR, WORKMAN AND THE MANAGEMENT OF M/S MOHAN  
SPINNING MILLS, ROHTAK

*Present :—*

Petitioner in person.

Shri Jatinder Kumar, A. R. for the Respondent.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Ram Bahadur and the management of M/s Mohan Spinning Mill, Rohtak, to this Court, for adjudication,—*vide* Haryana Govt. Gazette Notification No. 113-146/86/1617-22, dated 13th January, 1987.

Whether the services of Shri Ram Bahadur were terminated or he has lost his lien by absenting himself? To what relief is he entitled on the decision of this issue?

2. After receipt of the order of reference, notices were issued to the parties. Both the parties appeared. The claim of the petitioner is that he was employed with the respondent as a Karigar, since 11th January, 1980, but the respondent chooses to terminate his services unlawfully with effect from 17th June, 1986, in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. Before a reply could be filed by the respondent, happily, a settlement was arrived at, whereunder, the petitioner has since resumed his duties from the month of December, 1986 with continuity of service but has relinquished his claim for back wages. In terms of this settlement, statements of the petitioner and that Jitender Kumar Authorised Representative of the respondent have been recorded. So, now, nothing survives for adjudication. The reference is answered and returned accordingly with no order as to cost.

Dated the 27th February, 1987.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.

Camp Court, Sonapat.

Endorsement No. 28 of 87/538, dated the 24th March, 1987

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947,

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.

Camp Court, Sonapat.

No. 9/2/87-6Lab./2313.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Mohan Spinning Mills, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 37 of 1987

between

SHRI SHIVJI LAL, WORKMAN, AND THE MANAGEMENT OF M/S MOHAN SPINNING MILLS ROHTAK.

Present :

Petitioner in person.

Shri Jatinder Kumar A. R. for the respondent,

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between the workman Shri Shivji Lal and the management of M/s Mohan Spinning Mills Rohtak, to this Court for adjudication,—*vide* Haryana Government Gazette notification No. 113-146/86/1657-60 dated 13th January, 1987.—

Whether the service of Shri Shivji Lal were terminated or he has lost his lien by absenting himself? To what relief is he entitled on the decision of this issue?

2. After receipt of the order of reference, notices were issued to the parties. Both the parties appeared. The claim of the petitioner is that he was employed with the respondent as a worker since 24th November, 1979 but the respondent choose to terminate his services unlawfully with effect from 14th June, 1986 in flagrant dis-regard of the provisions of the Industrial Disputes Act, 1947.

3. Before a reply could be filed by the respondent, happily, a settlement was arrived at whereunder, the petitioner has since resumed his duties from the month of November, 1986 with continuity of service but has relinquished his claim for back wages. In terms of this settlement, statements of the petitioner and that Jitender Kumar authorised Representative of the respondent have been recorded. So, now, nothing survives for adjudication. The reference answered and returned accordingly by with no order as to cost.

Dated the 27th February, 1987.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

Endst. No. 35/87, dated the

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

No. 9/2/87-6Lab./2314.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of (i) Transport Commissioner, Haryana, Chandigarh (ii) General Manager, Haryana Roadways, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 172 of 86

*Between*

SHRI SURAJ BHAN, WORKMAN AND THE MANAGEMENT OF (I) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH. (II) GENERAL MANAGER HARYANA ROADWAYS, ROHTAK.

Shri S. N. Vats, A. R. for the workman.

Shri S. C. Singla, A. R. for the Respondent.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Suraj Bhan and the management of (i) Transport Commissioner, Haryana, Chandigarh (ii) General Manager, Haryana Roadways, Rohtak, to this court, for adjudication,—vide Haryana Government Gazette notification No. Rohtak/55-86/42766-69 dated 19th November, 1986:—

Whether the termination of services of Shri Suraj Bhan No. 283 was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Driver in the year 1976 but the respondent chose to terminate his services unlawfully on 17th June, 1985 in flagrant disregard of the provisions of Section 25F of the Industrial Disputes Act, 1947.

3. Before any reply could be filed by the respondent happily, a settlement was arrived at, whereunder the petitioner has made a statement that he has since been reinstated and as such, he does not want to prosecute this reference. The same is answered and returned accordingly with no order as to cost.

Dated: 28th February, 1987.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,

Endorsement No. 172-86/540, dated 24th August, 1987

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,

No. 9/2/87-6Lab./2316.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Shadi Ram-Udhami Ram, Petrol Pump, Gohana Road, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,  
ROHTAK

Reference No. 157 of 1986

between

SHRI BAHADUR CHAND, WORKMAN AND THE MANAGEMENT OF M/S SHADI RAM-  
UDHAMI RAM, PETROL PUMP, GOHANA, DISTRICT SONEPAT

Present :—

Workman in person.

Shri M. C. Bhardwaj, A. R., for the respondent.

## AWARD :

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Bahadur Chand and the management of M/s Shadi Ram-Udhami Ram, Petrol Pump, Gohana, District Sonapat, to this court, for adjudication,—vide Haryana Government Gazette Notification No. Sonapat/45-86/35066-71, dated 22nd September, 1986 :—

Whether the termination of services of Shri Bahadur Chand was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he has been as a Clerk with respondent since 5th May, 1955 on monthly wages of Rs. 500 and that the respondent choose to terminate his services unlawfully on 17th January, 1986 in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, claim of the workman has been controverted in toto. Pleas taken need not be detailed, because this reference is being answered on grounds other than merits.

4. After the issues had been framed and the case was posted for evidence of the petitioner, happily, a settlement was arrived at, whereunder, the respondent has agreed to reinstate the workman with effect from 6th February, 1987 with continuity of service but without back wages. In terms of this settlement, statements of the petitioner and that of Shri M. C. Bhardwaj Authorised Representative of the respondent have been recorded. So, now, nothing survives for adjudication. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated the 28th February, 1987.

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 157-86/542, dated 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

The 6th May, 1987

No. 9/1/87-6 Lab./2903.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. Hindustan Machine Tools Ltd., Pinjore, (Ambala).

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,  
AMBALA

Reference No. 231 of 1984

(Old Reference No. 1 of 1972)

SHRI Y.P. ARORA, WORKMAN, M.B.B.S., HOUSE NO. B-63, H.M.T. LTD., PINJORE AND  
THE MANAGEMENT OF MESSRS HINDUSTAN MACHINE TOOLS LTD., PINJORE  
(AMBALA)

Present :

Shri P.C. Vatrana for workman.

Seth Bhagirath Dass for respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (c) of sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Y.P. Arora and Messrs Hindustan Machine Tools Ltd., Pinjore (Ambala) originally to Labour Court, Rohtak. The terms of the reference are as under :

"Whether termination of services/dismissal of Shri Y.P. Arora was justified and in order if not to what relief is he entitled ?"

On creation of Labour Court at Ambala in April, 1984 this reference was received by transfer.

Workman Shri Y.P. Arora through his 'demand notice dated 5th August, 1971 alleged' that he is a qualified Doctor possess qualification of M.B.B.S. He was appointed by General Manager, H.M.T. Ltd., Pinjore with effect from 11th January, 1965. He had been discharging his duties in a most honest and efficient way. There was no complaint against his work and conduct with the respondent management of any kind; up-till the day of his termination he was never conveyed any adverse remarks by the management. On the basis of his merit and seniority he was promoted as R.M.P. in higher scale in H.M.T. Ltd., Pinjore. On 31st July, 1971 he was called by Shri D.N. Rakhra, Deputy General Manager, H.M.T. Ltd., in his office and threatened him to resign from the post of R.M.O., H.M.T., Pinjore otherwise he would see that his services would be terminated. Moreover, behaviour of Shri Rakhra towards him while talking with him was most un-desirable. He brought this fact to the notice of General Manager, H.M.T. Pinjore through a registered letter dated 2nd August, 1971. On 2nd August, 1971 he received letter No. HMR/T. No./3016, dated 2nd August, 1971 regarding his termination of services which was signed by Shri D.N. Rakhra, Deputy General Manager, for General Manager which is illegal. The action of H.M.T. management is absolutely arbitrary, unjust, unwarranted, uncalled for and *mala fide*. Before passing termination order the H.M.T. management did not serve any show cause notice upon him, nor gave intimation of any charges; which warranted such an action against him. No reason for the termination of his services was intimated to him. Two doctors who were junior to him have been working so there was no question of retrenchment in the strength of the Doctor. In fact; he alleged that this action of the management is actually victimising of the applicant. Dr. H.S. Mishra, A.M.O. was about to leave the job of the management because he was expected to go abroad soon and the management wanted to shed the applicant and wanted to promote some other Doctor in his place. He further alleged that order of termination of his services without assigning any reason is null and void in the eyes of law. He made an prayer to the General Manager, H.M.T., Pinjore that he be reinstated with continuity of service and with full back wages and order of the Deputy General Manager of respondent be cancelled and be declared illegal.

Respondent management was served. It submitted the written statement and contended that Dr. Y.P. Arora was in the employment of the respondent management and was performing the managerial/supervisory duties besides performing the medical duties. He used to grant leave to the staff/employees who used to work under him. He used to change their duty roster, and he was authorised to take disciplinary action against the staff posted under him. He used to receive salary more than Rs. 500 P.M. and as such he does not fall within the definition of a workman as given in clause 2(s) of Industrial Disputes Act, 1947 and no Industrial Dispute within meaning of section 2(k) of I.D. Act, 1947 exists between Shri Y.P. Arora and the answering respondent management.

It was also contended that Shri Y.P. Arora was employed as Medical Officer with effect from 11th January, 1965, and he was promoted as a Resident Medical Officer on 1st December, 1968. While his services were terminated on 2nd August, 1971 and was offered one month's salary, in lieu of notice as mentioned in the terms of the appointment. The cheque sent to him was refused by him. Services of Shri Y.P. Arora were terminated because the management had lost confidence in him because of the complaint that the said Dr. Y.P. Arora had been issuing wrong certificates to the workmen certifying them to be ill. Although they were fit, this was done by him on receipt of illegal considerations from the workmen. One such case is that Shri B.S. Pannu, who paid Rs. 12 for obtaining a certificate for Shri Jagir Singh, a co-worker. The management did not want to spoil the career of Shri Y.P. Arora and when the matter was brought to his notice he could not give satisfactory reply and on the other hand begged that his career be not spoiled and it is in those circumstances that the order of termination was passed. Shri Y.P. Arora thus is not entitled to any relief. It was also contended that Shri Y.P. Arora has been keeping the company's quarters and has been practising at Pinjore village independently. He has no right to live in the respondent's quarters and he is not prepared to vacate, in spite of request made to him. He directed to vacate the quarter.

Applicant Dr. Y.P. Arora filed application through which he controverted the contentions of the respondent management by saying that no doubt he was an qualified and skilled Doctor, he used to perform medical duties by way of attending the patient employed in the respondent management his main function was not to perform managerial/supervisory duties. However, he admitted that when Dr. Mishra used to be on leave he used to perform his duties who was the administrative head of the hospital situated in the respondent management.

He further urged that it is incorrect that there was any term of his appointment that his salary could be offered in lieu of notice, in fact before terminating his services no charge-sheet, no notice was ever served upon him. He was not given any opportunity of filing any reply of such notice/chargesheet, no inquiry was held, no witness was examined against him nor he was given any opportunity to cross-examine those witnesses and to lead any defence evidence. Even before dispensing with his services he was not heard by the General Manager, H.M.T., Pinjore in fact, G.M., H.M.T., Pinjore was on leave and in his absence Mr. Rakhra while officiating as a General Manager passed his termination orders which are illegal. He further urged that he is a workman in the definition given under Industrial Disputes Act, and his termination order is made arbitrarily and illegally so it be set-aside. He be reinstated with the relief of continuity of service and with full back wages.

On the pleadings of the parties the following issues were framed by my learned predecessor on 8th June 1972 ;

Issue No. 1 :

Whether the applicant Dr. Y.P. Arora is not workman ? OPM.

Issue No. 2 :

Whether the termination of services of Shri Y.P. Arora was justified and in order, if not, to what relief is he entitled ? OPM.

Issue No. 3 :

Relief.

During the pendency of trial of this Industrial Dispute respondent-management absented; so an *ex parte* award, in favour of Shri Y.P. Arora was passed by my Ld. Predecessor. That *ex parte* award was challenged by the respondent-management which was set aside and parties were again afforded opportunities to take part in the proceedings and after the conclusion of evidence on merits the award be written again.

I have heard Shri P.C. Vatrana for the workman and Shri Bhagirath Dass Seth for respondent-management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :

Issue No. 1 :

Onus of this issue was placed on respondent-management due to that fact it was bound to discharge its onus in this context. Respondent-management relied upon statement of MW-1 Dr. N.K. Soni the then Chief Medical Officer in the Hospital of H.M.T., Pinjore. This witness appeared in the Court on 27th September, 1978 and 22nd May, 1979. In examination-in-Chief Dr. Soni stated that applications of all the staff members used to be recommended by Dr. Y.P. Arora in routine. But in the absence of Dr. Mishra who had the authority to sanction the leave applications, he used to recommend applications of the patients for leave in routine too. In cross-examination this witness deposed that Dr. Y.P. Arora was a qualified Doctor. He identified signature of Dr. Mishra at point 'A' on documents Exhibit W-1 to Exhibit W-7 and further stated that final authority in respect of all the matters regarding the H.M.T., Pinjore Hospital was Dr. Mishra. It was up to final authority to accept or reject the recommendations of Dr. Arora. In certain cases Dr. Mishra did not agree with the recommendations of Dr. Arora as it is evident from Exhibit M-13 and Exhibit M-14. He further stated that no receipt and despatch register is maintained in their dispensary. Mr. Mishra was admittedly Administrative Medical Officer for H.M.T. Hospital. He further admitted that Dr. Arora did not have any authority to punish an employee or to appoint, or to terminate, or to suspend. Certain documents which were demanded by Dr. Arora for producing in the evidence were not produced by the respondent-management in that context. And following court question was put to Dr. Soni :—

"When you have produced so many documents pertaining to leave recommendations by Dr. Arora, can you assign any reasons for withholding similar other applications from other employees which were recommended or sanctioned by Dr. Arora or should I presume that except the application already placed on record no other application sanctioned or recommended by Dr. Arora."

Ans: "My statement that the record pertaining to Dr. Arora was searched from the date of his appointment till termination and all relevant documents is not correct." *Vide Ex-M-19* Dr. Arora had also allotted duties like other Doctors in the Hospital in the duty roster. There were about 3,000 employees in the H.M.T. he did not know exact figure of the employees who were covered in the E.S.I. The practice that the patients name the Dr. from whom they want the treatment and the patients get the treatment from their doctors, but in H.M.T. they were not following this practice and marked -W-2 is the prescribed form in which the patients opt the doctors. He did not remember how many employees patients were allotted to him at a time. They were allotted from time to time and the number varies. He cannot say whether before termination of services of Shri Y.P. Arora he had 400 patients. All the documents from the beginning of Dr. Arora services in the hospital was searched and whatever documents were available from the date of joining till the date of termination. Dr. Arora did not have any authority to punish any employee or to appoint or to terminate any employee, nor he had power to suspend any employee.

From the above statement of Dr. N.K. Soni it is evident that Dr. Arora was not a final authority in any matter pertaining to H.M.T. Hospital. In fact Dr. Mishra, Administrative Medical Officer was the final authority, in respect of, all the matters pertaining to the H.M.T. Hospital, Pinjore.

Management examined Shri O.P. Bansal, Personnel Manager as MW-2. This witness had no personal knowledge about this case whatever he gathered from the office record; he prepared note which is Marked MW-1/A. He deposed that he had brought the fifteen files and registers containing many papers. Each file contains more than 100 pages. He has not brought file of Dr. Mrs. Mahajan, Dr. Somti Khurana in respect of formal leave application of Medical Department from 26th June, 1969,

File No. 3 contains 152 applications out of which Ex. 35 to M-38 were recommended by Dr. Arora and rests were recommended and sanctioned by Dr. Mishra and by others. Thus the main duties of Dr. Arora were shown in the certificate issued on 10th October, 1971 much before the date of termination by the Head of the Department Dr. H.S. Mishra, the then Administrative Officer, Hospital, H.M.T., Pinjore. For not bringing complete records requisitioned by Dr. Arora, by Dr. N.K. Soni and from his own statement it appears that Dr. Soni has not given the clear version because he had his personal interest against Dr. Arora, because Y.P. Arora was Senior to Dr. Soni. It is evident from his statement that Dr. Soni joined in 1968 whereas Dr. Arora joined 11th January, 1965. After termination of Dr. Arora, Soni was to be promoted as Chief Medical Officer of H. A. C. Hospital.

Shri Y.P. Arora to rebut the evidence led by the management on this issue examined himself as WW-Shri H. Paul on 30th August, 1979, Shri Jagmohan, Ex-Compounder of H.M.T. Hospital on 30th August, 1979, Shri Ram Kishan, Ambulance Driver of H.M.T. Clinic and Shri A.L. Sood, an employee of the respondent. All the witnesses with single voice deposed that Dr. Y.P. Arora was mainly treating the patients (employees) of H.M.T. It is also on records as compared to other doctors in the Hospital, Dr. Arora used to attend more patients rather double the number of patients as compared to Dr. N.K. Soni who was junior to Dr. Arora and was later on promoted, after Dr. Arora was removed from service.

It is also essential to reproduce here statement of Shri Y.P. Arora which he made on 6th July, 1972. He deposed that he joined service of respondent H.M.T., Pinjore as a Medical Officer on 11th January, 1965 and had no Supervisory/Managerial powers. His duties were simply to attend/examine the patients of H.M.T. and to prescribe medicine and some time to perform operations. He could only recommend leave/rests to the patients/employees. The final authority regarding sanction of leave/rest vested in Dr. H.S. Mishra, A.M.O. In case Dr. Mishra happened to be on leave and authorised him to sanction leave or to prepare duty roster in those circumstances he performed the duty in his absence upto the extent powers delegated to him.

Seth Baagirath Dass, Authorised Representative of the Respondent-Management while arguing on this issue laid his main stress that duties of Dr. Arora no doubt was to attend the patients (H.M.T. employees) in addition to that he used to discharge Managerial and Supervisory duties, so he argued that Shri Y.P. Arora is not a workman in the definition laid down under Section 2(s) of Industrial Disputes Act, 1947. He draws my attention towards 1970-SC-Burmah Shell Company versus Burmah Shell management Staff page- 590 in which it was observed that for an example an employee in any industry to be workman under Section 2(s) of the Industrial Disputes Act, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The principle is now well settled that for this purpose a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other types of work.

I think that this judicial pronouncement is in fact helps the workman Dr. Arora and not to the management because from the evidence of Dr. N.K. Soni and witnesses of the applicant, it is established beyond reasonable doubts that the main function of Shri Y.P. Arora was to attend/examine the patients who were employees, of H.M.T. and to prescribe medicine and some time to perform operations if needed. In addition to that if any employee needed any recommendation regarding medical certificate/rests on account of illness he used to recommend such matters and final decision used to be taken by Dr. Mishra who was Administrative Medical Officer. Dr. Arora used to officiate in place of Dr. Mishra, A.M.O., if latter used to authorise him and used to delegate his powers when the latter to be on leave, in those circumstances Dr. Arora used to recommend the applications of the employees but the final decision used to be taken by Dr. Mishra. It is also in the evidence that Dr. Arora had no powers to appoint or to suspend, to dismiss or to punish any employee of H.M.T. Hospital so the whole evidence shows that the main function of Dr. Arora was to attend, examine, prescribe medicine to the patients/employees of H.M.T. and some times he used to perform operations of patients casual recommendations of the applications of the patients was not at all an Managerial or Supervisory function.

In LLJ-1952-Vol-2 it was observed that a Medical Officer is a technical hand hence he is a workman in the definition under Section 2(s) of Industrial Disputes Act, 1947. While taking this view the Hon'ble judges of Assam Court relied upon 1958-Vol-1-LLJ-Page 500 (F) -SC.

In 1970-SC-Vol-2 -LLJ-page 590 it was again observed that Doctor is a technical hand hence he is a workman.

Similar view was taken in SLR-1982-Vol-II, Punjab and Haryana High Court it was observed that doctor is a workman though drawing wages above Rs. 500.

In LIC-1986-Page-1516-DB Allahabad High Court a Divisional Assistant Officer, Railways was declared as a workman. In LIC-1977-Page 1088 (DB)-Allahabad High Court, Dr. was held as a workman.



In LIC-1986-Page-1745-Vol-12-Cal-(DB) High Court while relying upon Supreme Court it was observed that definition of the workman be interpreted liberally in LIC-1985-Page 1008-SC-(FB). It was observed that main duties of the applicant to be considered and not the incidental duties.

In 1982-SLR-Vol-2 State of Haryana *versus* Narinder Kumar, Punjab & Haryana High Court, page 229 it was observed that Industrial Disputes Act, 1947 section (s) Dr. falls within terms of a workman. Doctor not employed in the Hospital mainly in a Managerial or Administrative capacity to functioning to treat patient is a workman not with compliance the facts that he draws wages above of Rs. 500 per mensem.

In view of my above discussion on facts and laws cited above, I reach at the conclusion that applicant Dr. Y.P. Arora was employed for performing duties to attend/examine prescribed medicine and to perform operations upon the employees of H.M.T. Pinjore. So he is a workman in the definition given under 2(s) of Industrial Disputes Act, 1947. Hence this issue is answered, in favour of workman and against the management.

#### Issue No. 2 :

Onus of this issue was also placed upon the respondent-management. Management was bound to establish that is order regarding termination of services of Shri Y. P. Arora was just and correct. While discussing this issue I would like to mention here that there can be two aspects of the case of Dr. Y.P. Arora regarding his termination.

Firstly, either it is case of simple discharge or the orders of termination are punitive in nature with stigma.

In case of termination of as simple discharge, in those circumstances the question will arise whether Dr. Arora had completed service of 240 days in that case it would amount to the case of retrenchment as defined under section 2(oo) if he had completed 240 days. Admittedly Dr. Y.P. Arora had completed service more than 240 days because he joined service of respondent-management on 11th January, 1965 while termination order was passed on 2nd August, 1978. Case of the management is that one month salary, in lieu of notice was paid to Dr. Y.P. Arora with his termination letter but no retrenchment compensation whatsoever was despatched/ offered/paid to him. Had there been a case of retrenchment and of a simple discharge, in those circumstances the orders of termination would have been basically wrong and the workman would have been entitled to full back wages with continuity in service as well as with seniority and also promotion, etc. But in the case in hand the respondent-management has taken a plea that Dr. Y.P. Arora had been discharged while receiving illegal gratification from the patients who used to give him money to take medical certificate for their illness and rest, etc. and similarly as per the allegations of the respondent-management workman received Rs. 12 as a graft from Shri Harbans Lal Pannu for obtaining a Medical Certificate for Shri Jagir Singh and complaint was received from Shri Harbans Lal Pannu.

In view of the above allegations the duty of the management was to have issued charge-sheet to the workman should have obtained reply; if the reply of the workman would have been found un-satisfactory, in those circumstances an Inquiry Officer should have been appointed who would have conducted an Inquiry should have examined witnesses in the presence of Dr. Y.P. Arora and applicant must have been given opportunity to cross-examine witnesses of the respondent and he should have been allowed to lead defence and thereafter before terminating his services he should have also been allowed an opportunity of being personally heard and thereafter; if the evidence would have been against Dr. Y.P. Arora, his services should have been terminated. But in the present case all the norms were kept aside; in other words no such norms were followed. MW-6 Shri S.S. Sahni Security Officer stated that in June, 1971 Shri Harbans Lal Pannu submitted a complaint to him which he forwarded to the administration. Shri Harbans Lal Pannu appeared as MW-3. He deposed that he was called by Shri B.S. Dhillon in his office and under threat he obtained his statement against Dr. Y.P. Arora. He has filed an affidavit that what-ever was got written by the management from him was all under threat and there was no truth in it.

In terminating the services of Dr. Arora the main role has been played by Shri D.N. Rakhra who appeared as MW-4. He stated that he received certain complaints against Dr. Y.P. Arora regarding illegal gratification. He made oral inquiry from Dr. Y.P. Arora and was not satisfied from his reply. Thereafter when General Manager was on leave he passed termination orders of Dr. Y.P. Arora. Shri D.N. Rakhra in cross-examination stated that inquiry did take place. If proceedings were recorded which might have been submitted to the General Manager who was appointing and punishing authority of the applicant. Complainant Shri Jagir Singh did not sign the inquiry proceedings being false; copy of complaint was neither produced on the file, nor copy of same was given to the workman. Moreover in this case the defence of applicant is that Shri B.S. Dhillon, Dr. Mishra and D.N. Rakha were annoyed with him because he refused to oblige the then Personnel Manager. Shri B.S. Dhillon not to recommend the sick leave to his Stenographer, Miss Sheela Sharma who was actually ill the detail of this factual position is available in Ex-WW-4/23. The inquiry file, its proceedings were not placed on the judicial file. Moreover if for the sake of arguments it is to be presumed that inquiry proceedings were taken up in those circumstances the inquiry Officer was Shri D.N. Rakhra. He did not prepare any Inquiry report, did not supply any copy of inquiry report to Sri Y. P. Arora, did not submit its report to General Manager who was

an appointing and punishing authority of Dr. Y.P. Arora. No show cause notice was served upon Shri Y. P. Arora nor any opportunity of leading defence evidence or personal hearing was afforded to him. In fact when General Manager who was an appointing and punishing authority and head of the Department of the applicant was on leave. Shri D.N. Rakhra was, officiating as a Acting General Manager, he passed termination order of the workman which shows that a prosecutor acted as a judge and he could not have taken an impartial view about the applicant. In view of my aforesaid discussion the management failed to produce any documents regarding inquiry proceedings, nor Shri Jagir Singh was examined who is still in the service of respondent-management. Shri Harbans Lal Punnu appeared in the witness box. He refuted the charges by saying that he did not pass any illegal gratification to Dr. Arora on behalf of Shri Jagir Singh in those circumstances the entire case of the management is fabricated and falls on the ground. Order of termination regarding services of Shri Y.P. Arora is illegal, un-just and incorrect. So this issue is also decided, in favour of, workman against the management.

### Issue. No. 3:

During the pendency of trial of this dispute management agreed that it is prepared to take the applicant back in the service as Additional C.M.O. on prescribed grade and wages, but without back wages and also prepared not to claim Rs. 40,000 already advanced to workman, but the workman insisted regarding his back wages.

The management has lead a lot of evidence that workman had been practising at Pinjore and earning a lot. Different versions came in evidence that he has constructed a house, keeps car, he is an Income Tax payee. Applicant has produced his Income Tax Returns which he has submitted to the Income Tax Department.

Now the question is that when I have reached at a conclusion that termination of workman is unjust and incorrect, in those circumstances to what relief is he entitled. In 1969 (2)-LLJ-Page 416 it was observed that the employee is entitled to full back wages with increment in the scale applicable to him for the period between the date of operation of the Award and the date of re-instatement with interest on such portion of the back wages in pursuance to the orders of Supreme Court in stay application.

In view 1979-SLR-Vol-3-Page 223(FB) Punjab & Haryana High Court held ordinarily, therefore a workman whose services have been illegally terminated would be entitled to full back wages except to the extent.

He was gainfully employed during his enforced idleness. That is normal rule. Any other view would be a premium and un-warranted litigative activity of the employer.

In 1985-LIC-Page 1292 Gujrat High Court held discharge from service subsequent re-instatement treating period of break as leave without pay and the service as continued service held entitled employee to all the normal benefits of service including determination of seniority from date of his initial appointment in service.

The workman has categorically stated that the house which he possesses is an H.U.F. property thus it had no relevancy with the back wages. The respondent management has failed to establish that this house has been exclusively owned by the applicant. In view of my above discussions I am of the considered view that workman Shri Y. P. Arora is entitled to re-instatement from the day of his termination with the relief of continuity in service including seniority, promotion, increments, existing scales, etc. with full back wages up to the day he is allowed to join service of respondent-management. However, I would like to make clear here that being a Medical Practitioner at Pinjore he had been earning, the accounts of his earning are detailed in the Income Tax returns which he submitted to the Income Tax Department annually while working out the full back wages of the applicant the department shall deduct the income earned by the applicant while as a medical practitioner which has been shown in his income tax return. The advance which he had taken from the department that amount has to be recovered from him, if the department so liked as it is being recovered in case of respondent employees. Balance of amount regarding back wages shall be paid to the applicant. I pass award regarding the dispute between the parties accordingly.

Dated 2nd March, 1987

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

Endst. No. 544, dated Ambala City, the 10th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947

V.P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

KULWANT SINGH,  
Secretary to Government, Haryana,  
Labour and Employment Department.